

REMARKS

Favorable reconsideration of this Application, as presently amended and in light of the following discussion, is respectfully requested.

Claims 1-9 remain pending in the present Application. Claims 1, 2, and 4-9 are amended. Support of the amendment can be found at least on page 16, lines 1-9 and Figs. 9-11 of the specification. No new matter is added by this amendment.

By way of summary, the Official Action presents the following issues: Claims 1-5 stand rejected under 35 U.S.C. § 112, second paragraph, as indefinite; and Claims 1-9 stand rejected under 35 U.S.C. § 103(a) as unpatentable over Agraharam et al. (U.S. Publication No. 2002/0091771 A1, hereinafter Agraharam) in view of “Official Notice.”

REJECTION UNDER 35 U.S.C. § 112

In regard to the rejection of Claims 1-5 under 35 U.S.C. § 112, second paragraph, as outlined in Paragraph 2 of the Official Action, Applicant has cosmetically reworded independent Claims 1, 4, and 5 to recite “a group request to include a corresponding one of the plurality of information processing apparatuses in one of the plurality of groups” to clarify the confusion expressed in the Official Action.

Accordingly, Applicant respectfully requests that the rejection of Claims 1-5 under 35 U.S.C. § 112, second paragraph be withdrawn.

REJECTION UNDER 35 U.S.C. § 103

The Official Action has rejected Claims 1-9 under 35 U.S.C. § 103(a) as unpatentable over Agraharam in view of “Official Notice.” Applicant respectfully traverses the rejection.

Amended Claim 1 recites, *inter alia*, a service providing apparatus including:

“reception means for receiving a group request to include a corresponding one of the plurality of information processing apparatuses in

one of the plurality of groups, the group request selecting a respective one of the plurality of groups, and for receiving a content request transmitted from any of the information processing apparatuses belonging to one of the plurality of groups, the content request including a selection from the list of available content ...; and

communication means for transmitting the data acquired by said acquisition means simultaneously to those of the information processing apparatuses accessing the shared server and belonging to the same group.”

For example, the service providing apparatus recited in amended Claim 1 provides storage for a plurality of groups, a list of available content, and content that may be transmitted to members of a same group upon request from a single user of the group. The service providing apparatus allows remote users to assemble into a same group and readily communicate with each other using the shared server to transmit both text based data and content such as music.

In an exemplary embodiment of the Applicant's invention, at least two users access the same group of the shared server. As shown Figures 1 and 5, each client computer (3-1 to 3-3) is connected to the shared server (2), and is capable of requesting data such as music that is transmitted to each of the client computers (3-1 to 3-3) belonging to the same group.¹ Further, as demonstrated by the non-limiting illustrations of Figures 10 and 11, the service providing apparatus allows users to share the requested data as well as discuss the data while the data is being transmitted.² In operation, one of the users selects data such as a song from a list of available songs stored in a database (11) on the shared server (2) that is transmitted to the user when the user accesses the shared server (2).³ The selected song is then communicated to all users belonging to the same group accessing the shared server (2).⁴

¹ Applicant's specification, page 9, line 20 to page 10, line 6.

² Applicant's specification, page 21, line 16 to page 27, line 2.

³ Applicant's specification, page 14, lines 2-18.

⁴ Applicant's specification, page 14, lines 2-18.

While the selected song is communicated to all the users belonging to the same group, the users may communicate by transmitting text using the service providing apparatus.⁵

Conversely, Agraharam, describes a system and method allowing an Internet user to act as a broadcast session conductor by assembling audiovisual information in a multimedia document, and broadcasting that information to a predetermined group for simultaneous viewing.⁶ More specifically, the session conductor prepares a multimedia broadcast by using a multimedia authoring tool (306) to create, retrieve, or edit audio, video, and text information from local (307) or remote servers (105) that is then stored in the presentation server (312).⁷ The session conductor also has the burden of specifying session parameters including a participation list indicating which client terminals (103) and (104) will constitute the session audience, the multimedia transmitted, the delivery time, and required bandwidth for the session.⁸ Further, only client terminals (103) that are registered with the conductor terminal (101) specified in the participation list may access the broadcast session over the network. The session conductor in Agraharam must always provide the session parameters including the participation list of the session audience as illustrated in step (435) of the flowchart in Figure 5.

Agraharam does not teach or suggest storing a plurality of groups, a list of available content and content, receiving a group request selecting a respective one of the plurality of groups, receiving a content request including a selection from the list of available content, or transmitting the data acquired by the acquisition means simultaneously to those of the information processing apparatuses accessing the shared server and belonging to a same group, as recited in amended Claim 1.

⁵ Applicant's specification, page 26, line 22 to page 27, line 2.

⁶ Agraharam, abstract.

⁷ Agraharam, page 2, paragraph 18.

⁸ Agraharam, page 3, paragraph 27.

The outstanding Office Action states, "'Official Notice' is taken for the concept of shared server servicing a plurality of groups is known and accepted in the art."⁹ The Applicant respectfully submits that Official Notice alone is not permissible as grounds for rejection in the outstanding Official Action. As stated in the MPEP at § 2144.03(A):

It would not be appropriate for the examiner to take official notice of facts without citing a prior art reference where the facts asserted to be well known are not capable of instant and unquestionable demonstration as being well-known. For example, assertions of technical facts in the areas of esoteric technology or specific knowledge of the prior art must always be supported by citation to some reference work recognized as standard in the pertinent art. *In re Ahlert*, 424 F.2d at 1091, 165 USPQ at 420-21.

With regard to the above, the Applicant respectfully submits that the features advantageously recited in Claim 1 are not "capable of instant and unquestionable demonstration as being well-known."

Further, the combination of Agraharam and the Official Notice would still fail to teach or suggest all elements of the service providing apparatus in amended Claim 1 since the session conductor in Agraharam teaches away from Applicant's claimed invention in that it provided broadcast session parameters including the partition list which defines the session audience. In this regard, "A reference may be said to teach away when a person of ordinary skill in the art, upon reading the reference, would be discouraged from following the path set out in the reference, or would be led in a direction divergent from the path that was taken by the applicant." *In re Gurley*, 31 USPQ2d 1130, 1131 (Fed. Cir. 1994). To this end, "disclosures in the references that diverge from and teach away from the invention cannot be disregarded", Phillips Petroleum Company v. U.S. Steel Corp., 9 USPQ2d 1461 (Fed. Cir. 1989). Thus, the combination of Agraharam and the Official Notice fails to teach or suggest storing a list of available content that is provided to the plurality of information processing units when an information processing unit connects to the shared server, receiving a content

⁹ Office Action mailed November 30, 2004, page 4, paragraph 6.

request including a selection from the list of available content, and transmitting the data acquired by the acquisition means simultaneously to those of the information processing apparatuses accessing the shared server and belonging to a same group.

Accordingly, it is respectfully requested that the rejection of Claim 1 under 35 U.S.C. § 103(a) be withdrawn.

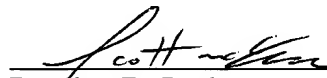
Independent Claims 4-6 and 8-9 recite substantially similar limitations regarding the selection of one of the plurality of groups, the selection of content from the list of available content, and information communicated to the information apparatuses belonging to the selected group discussed above with reference to Claim 1, and therefore are allowable for at least the same reasons as Claim 1. Likewise, dependent Claims 2-3 and 7 are allowable based at least on their dependent recitation of the above identified limitations.

CONCLUSION

Consequently, in view of the foregoing amendment and remarks, it is respectfully submitted that the present Application, including Claims 1-9, is patentably distinguished over the prior art, in condition for allowance, and such action is respectfully requested at an early date.

Respectfully submitted,

OBLON, SPIVAK, McCLELLAND,
MAIER & NEUSTADT, P.C.



Bradley D. Lytle
Attorney of Record
Registration No. 40,073

Customer Number
22850

Tel: (703) 413-3000
Fax: (703) 413 -2220
(OSMMN 08/03)
BDL/SAM/SAE/kad

I:\ATTY\SAE\PROSECUTION\20's\202708US\202708US-AM2_23_05.doc

Scott A. McKeown
Registration No. 42,886